

**Town of Milford
Zoning Board of Adjustment
January 19, 2012
Case #2012-01
Carolyn Magri-Halstead
Special Exception Rehearing**

Present: Fletcher Seagroves, Vice Chairman
Laura Horning
Steve Bonczar
Zach Tripp

Absent: Kevin Johnson, Chairman
Len Harten – Alternate
Michael Unsworth-Alternate

Secretary: Peg Ouellette

The applicant, Carolyn Magri Halstead, owner of Map 52, Lot 18-1, 365 Melendy Road and NH Rte 13 South, Residence "R" District, is requesting a special exception from Article VI, Section 6.02.6:B to impact not more than 1800 SF of wetland buffer for the construction of a proposed driveway. This is a re-hearing of Case #13-11 that was denied by the Zoning Board of Adjustment on October 6, 2011.

The minutes of case #2012-01 (Rehearing of #13-11) were approved on April 05, 2012.

Fletcher Seagroves, Vice Chairman, acted as Chairman of the meeting and opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all of the procedures of the Board and introduced the Board.

He read the notice of hearing into the record.

The list of abutters was read. Abutters present were: Constance Blake of 50 Colburn Road, Milford, NH; Reginald Walker III of 640 NH Rte. 13S and Fieldstone Land Consultants, PLLC of Milford NH was present on behalf of the applicant.

Chairman Seagroves informed the applicant that, since there were only four Board members present, she had the option to proceed with the hearing before four members or to request a postponement. If she proceeded with the four-member Board, it is necessary to obtain three affirmative votes in order to be approved and to sign a waiver stating that she waives the right to a five-member Board and understands that three affirmative votes are required to approve her request. The applicant decided to proceed with the four-member Board and signed the waiver.

Chris Guida of Fieldstone Land Consultants, PLLC, came forward to present the case on behalf of the applicant. He stated he is a certified land scientist and certified wetland scientist. By way of background, he stated that a special exception is being requested. There is an existing road on the front with frontage on Rte. 13. The reason for choosing the location is that there is a woods road or farm road that has existed for probably 150+ years. To access the area in accordance with the Town standards, the Town driveway regulations require upgrading the driveway, including replacement of fill in the buffer, which triggered the special exception request. Fill placed in the buffer changes the flow of surface and ground water. In order to meet town driveway regulations, it is necessary to widen the driveway, for safety concerns, in order to access the lot. He stated the existing road was graded when it was created which created a dam that tended to impound water on the uphill side of it for short periods of time during spring runoff and high flow. The proposal is to fix drainage in that area and promote better drainage by adding a culvert; there was never a culvert there. He stated that he suspected there was not much flow there and the driveway was dry, so there was no need seen for a culvert. He stated that, as all present would know from walking in woods, they used to put stone culverts back in there; but there is no culvert here which appeared to him to mean that there was no need for one. The proposed culvert is to promote any water that might get impounded by adding fill, which would raise the driveway up approximately 2 feet. He stated that Conservation Commission had granted an approval for the wetlands permit, which will be an expedited wetlands permit, which is less than 3,000 SF of disturbance and is a minimum impact according to State regulations. He stated the remainder of the frontage is wetland, which is a reason for using the existing woods road to minimize disturbance and maintain the existing roadway to that end.

F. Seagroves asked for any comments from the audience.

S. Bonczar said, knowing what the Board was there for, he wanted to point out that they are affecting the buffer, not wetland; it needed to be stated that this is not impacting the wetland itself, but the buffer. The ordinance states that there is a specific width of the buffer – 25 feet.

C. Guida responded that some wetland is being filled. The proposal is to fill 1,500SF of wetland. He pointed out the area in pink on the map as the proposed wetland and the blue is the proposed buffer. He stated the Zoning Board has jurisdiction over the buffer so they are requesting a special exception.

Z. Tripp asked if the current road was inside the buffer and/or inside the wetland.

C. Guida responded that the purple area follows the blue line on the map; that roadway was built up.

Z. Tripp asked if the current width protrudes into the buffer.

C. Guida stated that you are crossing the wetland, so yes. The roadway is the buffer; there is wetland on either side of that roadway.

F. Seagroves asked for any further questions from the Board. There were none. He opened the meeting up for public comment.

R. Walker asked to hear the seven (wetland) criteria.

F. Seagroves stated that would be done shortly.

R. Walker asked if he could get a list of them.

C. Guida offered to read them. He then read the five criteria for a special exception and the seven wetland criteria.

L. Horning informed the audience that a list of the above criteria can be found on the Town website in the Town Ordinances.

F. Seagroves stated the applicant's representative would be going through the questions later in the meeting.

R. Walker stated he has been a resident across the street (from the property in question) for 25 years and his concern is impact on wildlife. He stated this is a wildlife corridor and over the course of 25 years there have been over a dozen deer killed in that area and numerous types of wildlife killed crossing the road. His concern is that with all the development on Rte. 13 we are starting to cut off areas for the wildlife where it is safe to cross the road. The highway can't be taken away, but the more impact on areas where wildlife travels, the harder it is for wildlife to migrate and travel their normal routes to find food, etc.

F. Seagroves stated there was a letter from the State on that.

C. Guida stated the NH Heritage Bureau did a screening and did not find any rare or endangered wildlife listed for this project area on their list.

R. Walker said this was first time he knew there was a bobcat in this area.

L. Horning said she has seen one by her residence.

R. Walker asked if the property abuts Melendy Road, also.

C. Guida said it does.

R. Walker asked for any reason why the project was not being accessed from that area.

C. Guida responded that they would be getting into that later in the meeting. He stated, as far as the wildlife corridor and Rte. 13, the driveway is not going to impact bobcats or wildlife and Rte 13 is a much larger hazard. It is no different than what is currently there and is not going to impede their travel in any way.

R. Walker responded that animals don't like to be out in the open and he was concerned with the cover provided along this wetland.

C. Guida stated that is going to stay; the wetland is going to stay.

R. Walker asked whether they are going to fill in around it; won't they have to remove trees and shrubs in that area? They are right on the edge of the swamp.

C. Guida stated that anyone can cut trees down on their own property. It's going to change things even in a buffer they can cut all trees in the buffer as long as they don't disturb the soil and stumps and the roots.

R. Walker stated he is just raising his concerns with the project.

C. Blake then spoke. She said that the road was being discussed as though it is a big road that has been raised up, but if you walk over (pointing to map) it drops down and is just barely above the water line. When they went in there last summer, they removed all the trees in that road and pushed them off to the side. The Conservation Commission could see it when they came; that the trees had been pushed aside so that the road showed up again; it hadn't really been there because it was overgrown. It stops at Rte 13, because the other side is Reginald Walker's property is and her property. Her grandmother owns the adjacent property and there are two other houses in the area. Her grandmother owns property along Rte 13, so this road didn't go across Rte. 13. It may have been a little logging road where they hauled a small sled across and pulled out some firewood or something but it wasn't at any time a big road along the pond. It didn't go anywhere because her grandmother's property was there. She said it is part of the swamp and part of the whole filtration system for the swamp. When you pull out all of that you stop filtration to help keep the water clean. On the other side on Melendy Rd. there is a big hill and there are houses there with driveways that are 8 or 9 percent grades that they can drive down with no problem. There is another house built on a hill and they built a driveway up a big hill. You don't have to go through the swamp. You can build a driveway up a hill. This (proposal) isn't the only way into the lot; there is another option.

L. Horning said she appreciated Ms. Blake's comments but in NH people have the right to do with their property as they please as long as it falls within the confines of the law. So the applicant had the right to be before the Board and she had a right to choose how she uses her property which is why there was a specialist at the meeting.

C. Blake said, so she has the right to come back.

L. Horning said she does and she has the right to cut down trees in her yard. That's why they have a soil conservation specialist. She said the Board is expecting to address all of her questions.

F. Seagroves asked for any further questions or comments. There were none. He closed the public portion of the meeting.

F. Seagroves asked C. Guida to read the application into the record.

S. Bonczar suggested starting with the seven criteria in Sec. 6.02.7 Criteria for Evaluation, which is specific to the wetland since part of the reason for requesting a re-hearing was there was no specific information the first time.

C. Guida read the seven criteria and responses in the application:

1. The need for the proposed project.

The existing woods road which existed prior to the wetland buffer being established runs adjacent to wetland areas; a portion of which is within the current wetland buffer. The need to upgrade the existing driveway is required by Town of Milford driveway regulations and since the pre-existing woods road is within the wetlands buffer zone a Special Exception is being requested to allow the upgrade of the existing woods road for use as an active driveway and access, a permitted use in the district. The proposed project and associated buffer disturbance is a typical and permitted use in order to allow landowners access to the upland portions of their property. The wetland systems throughout Milford are afforded the additional protection of the 25 ft. wetland buffer however, the crossing of wetland in order to access ones property is an established right and permitted use supported by the State of New Hampshire Wetlands Bureau as well as the Town of Milford. Wetland buffer impact is required with wetlands crossings and is a permitted use with additional review of the Conservation Commission and ZBA in order to verify that the proposed project is reasonable and in keeping with similar projects approved throughout the district and to verify that the evaluation criteria has been considered in the design.

F. Seagroves asked, in looking at the map, if the pink portion is the buffer.

C. Guida responded that the pink portion is the amount of actual jurisdictional wetland proposed to be impacted with the crossing. The buffer is the blue-ish area is the buffer around that prior lot. The red line is the buffer around the lot.

F. Seagroves asked if the road only goes through half of the pink portion?

C. Guida responded that is correct. In order to maintain the required 12 feet travel width and the associated shoulders and drainage culvert the road has to get wider and because of the property line location it can't be graded over the property line.

F. Seagroves said it looked like they are going in much more than they are actually going into it.

C. Guida said you can see the travel route and it is coming out about two feet in order to allow the culvert to be installed there and have appropriate grades off the shoulder.

Z. Tripp asked if the pink portion that doesn't have the travel grade, is that the grade coming down from the travel surface?

C. Guida said that is correct. He said the actual grading will end a little shorter. It will probably tie in a little closer and be somewhat smaller.

L. Horning asked if there is intent to replace some of the vegetation once the grading is completed.

C. Guida said the slope will be stabilized, seeded, erosion control fabric, some type of conservation mix of grasses, and they can plant other things, such as blueberry bushes and native species so the root system will help stabilize until everything gets growing.

Z. Tripp asked if technically the Board was there only to give approval for the blue section, the buffer. Board members said that is correct.

2. The plan is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.

The proposed driveway location is located with the narrowest part of the wetlands along the frontage off NH Rte. 13 and follows the existing woods road in order to minimize wetland and buffer disturbance area. The proposed wetland and buffer impact area is within an area previously

disturbed by farming and logging activities in the past rather than crossing or undisturbed wetland areas. The proposed driveway also has been oriented to avoid the wetland buffer as soon as possible after the wetlands crossing area. Although the existing lot has frontage on Melendy Road as well NH Rte 13, access from Melendy Road would cause substantial environmental disturbance due to the steep slopes and excessive length of driveway which would be required to access the proposed building area. Also the majority of the alternative proposed disturbance is also within the watershed of the abutting wetland area.

C. Guida said they are tuning the driveway to get out of the buffer sooner than if they stay straight to minimize any additional disturbance to the buffer.

Z. Tripp asked about the last line of the criteria referring to watershed – Is that implying the longer driveway coming from the road would potential get more runoff to the wetland area?

C. Guida responded the area if they were to come off Melendy Road, outlined in red, is the cut and fill. If all the drainage at the top of the hill facing Melendy Road would come down through a level spreader and a treatment swale and be discharged into a watershed. It would be treated properly but you would have to disturb about an acre of forest area that would have to be cut and then logged and cut and graded in order to create the driveway. The abutter is correct; it could be done. But it was evaluated when the proposal was first started and it was felt the overall impact – this hearing is for wetlands impact – but the overall environmental impact of removing that much forest and cutting that much soil is going to be greater than using the existing grade with less slopes.

L. Horning said she feels that was made clear when the Board first heard the case.

3. The impact on plants, fish and wildlife.

Since the proposed crossing has been designed to follow the existing woods road to the best extent possible based on property line setback requirements the impact on plants, fish and wildlife will be negligible. The plants in the area are dominated by an Eastern Hemlock and White Pine tree canopy with hemlock and maple and assorted sapling understory along the areas not within the existing roadway. Since the proposed drive follows the existing woods road a minimal amount of trees will need to be cut within the wetlands buffer for the proposed driveway upgrade. Although tree cutting is permitted within the wetland buffer (as long as sumps remain, and soil not disturbed), there is no additional cutting proposed within the wetland buffer other than that proposed for the driveway upgrade, the majority of which is already within the travelled way of the existing woods road. Evidence of wildlife in the buffer area consisted of an occasional bird, chipmunks, red squirrels and some white tailed deer tracks. Due to the proximity to NH Route 13 and the developed residential and commercial nature of the surrounding properties the area of proposed buffer disturbance adjacent to the highway will have negligible impact on wildlife. The primary use within the proposed buffer disturbance area is as a travel route, which will not be affected by the upgrade of the existing driveway. The area did not appear to be used by turtles or reptiles as the woods road is within a mature shaded forested area with glacial till type soils, no evidence (shells, digging etc) was observed of use by turtles or reptiles for nesting (prefer sandy soils). The existing woods road appears to have had a damming effect which restricts the flow of water from the uphill side (since there is currently no culvert under the woods road) causing periodic shallow ponding on the abutting property to the north. The proposed upgrade will install culvert under the driveway to allow for improved drainage flow as well as creating wildlife passage for small amphibians, reptiles and invertebrates. The plants and wildlife within the buffer area are common in southern NH and according to a requested review by the New Hampshire Natural Heritage Bureau; there were no recorded occurrences for rare species nor exemplary natural communities mapped in the project vicinity.

C. Guida said they are changing the grade a bit but it is a driveway. There will not be a fence or anything else that will change anything more than what is there. As far as the travel routes for amphibians it is fifteen inch diameter; most of the critters tend to go up and over things rather than go through the culvert but there is such a small area there you could probably get away with an eight or ten inch culvert. The proposal is fifteen inches for ease of maintenance as well as possible amphibian usage.

4. The impact on the quantity and/or quality of surface and ground water.

The proposed upgrade of the existing woods road will be conducted in accordance with State and town residential driveway regulations, the Milford Stormwater Management and Erosion Control Ordinance, as well as standard best management practices. The proposed driveway construction will not adversely affect the quantity or quality of surface and/or groundwater. The required degrading will not redirect the flow of runoff or stormwater to any other areas than where it currently drains. The proposed project will maintain gentle grade slopes and vegetation along the slopes of the driveway area which serves to decrease the energy of any stormwater which may run off NH Rte 13, thus allowing for infiltration into the soil thereby reducing erosion potential. The proposed upgrade will also provide improved drainage by adding a culvert under the drive where none currently exists. The temporarily disturbed area during construction will be isolated by properly installed silt fence and will be seeded, and stabilized with straw or jute matting until vegetation can be established.

Z. Tripp asked if they plan to add vegetation or compact materials.

C. Guida responded vegetation will be added which will be a mix of grasses with matting to stabilize it until it is established. Once that gets established they can add shrubs. As far as stormwater drainage, it drains off Rte. 13 and runs down into the wetland area; it will still do that through the culvert.

5. The potential to cause or increase flooding, erosion, or sedimentation.

The existing woods road and proposed upgrade as well as the remainder of the lot are not shown within the 100 year flood zone. The proposed buffer disturbance area is located at upgradient edge of a wetland area which does not cross or restrict the existing drainage. The wetlands in the crossing area are a backwater area that is not directly associated with the brook which enters the wetland from the other side (easterly side) of NH Route 13 through a culvert approximately 100 feet south, and downgradient of the crossing area. Due to the location of the crossing area in relationship to the adjacent wetland topographic lay of the land there is no ability for driveway construction in the proposed location to have any significant effect on water level in the wetland since the proposed crossing does not restrict water flow into or out of the wetland area. The micro-watershed area in which groundwater flows toward the crossing area is approximately six acres of well drained soils. Soils on the subject lot and contributing watershed are classified as Canton, stony fine sandy loam with an average slope of approximately 6-8%. Canton soils are well drained soils with moderately rapid permeability in the surface layers and rapid permeability in the subsoil. Typically Canton soils infiltrate stormwater and spring meltwater into the soils rapidly (but not excessively); this rapid infiltration and storage in the soil and groundwater helps to prevent surface runoff and flooding potential. Canton soil characteristics allow it to infiltrate stormwater quickly but then release it slowly into the groundwater which helps to reduce peak flows during storm events. Although the micro-watershed flows toward the wetland area on the lot, there are no perennial or seasonal streams on the lot or discharging into the wetland area. As previously mentioned the proposed upgrade of the existing woods road will be conducted in accordance with State and Town residential driveway regulations, the Milford Stormwater Management and Erosion Control Ordinance, as well as standard best management practices. Based on the existing soil conditions, gentle slopes and the surrounding area being entirely vegetated with either forest land or grass and shrubs the likelihood that the proposed upgrade will cause an increase in erosion, sedimentation or potential flooding in the area is negligible. Also since the proposed upgrade will provide a new culvert under the driveway, it will allow for additional flood storage to capacity due to the ability of the water to access forested areas on the northerly side of the driveway which was previously restricted due to the woods road. C. Guida commented that essentially water can flow back where it couldn't before.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.

Every case would need to be taken on an individual basis and evaluated on the individual conditions and merits through the Conservation Commission and Zoning Board of Adjustment. Every property has different issues which need to be considered, type and size of proposed impact, existing use situations, topographic features of the land, type and category of the wetland system just to name a few. However, due to the fact the vast majority of the abutting wetland area and associated buffer zone is currently owned by the town, other abutting properties are already developed, and at least one has previously been granted a permit to impact the wetland and buffer with an access drive similar to the one being proposed, the cumulative impact that would result to the wetland or buffer would be negligible and would not adversely affect the wetland functions and values of the existing wetland system.

7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.

The proposed woods road upgrade will have no adverse impact, and will likely have a positive effect on the system's ability to store water during seasonal storm events by providing a connection to the forested wetland area adjacent to the North. Some of the primary functions and values of the central wetland system (open water-ponded, riverine and emergent wetlands) are wildlife habitat for blue herons and other birds, such as raptors, waterfowl and song birds as well as habitat for assorted reptiles, amphibians, invertebrates, mammals and a few small minnows and finfish common in Southern NH. Being in close proximity to NH Rte 13 and residential and commercially developed areas the wetland also provides stormwater treatment such as sediment, nutrient and pollutant removal. The proposed project as designed will have no significant impact on the functions and values of the total wetland complex since the proposed buffer impact is extremely minor amount of impact as well as being located on the periphery of a backwater finger of the wetland system; it is just as likely that the act of removing some trees within the buffer and upland area will allow for more regeneration of faster growing trees species which tend to have higher wildlife habitat and food value than a mature stand of trees.

F. Seagroves asked if there were any other questions from the Board. There were none.

F. Seagroves asked C. Guida to read into the record the letter from the State.

C. Guida said it is the screening of the NH Natural Heritage Bureau: *The NH Natural Heritage database has been checked for records of rare species and exemplary natural communities near the area mapped below. The species considered include those listed as Threatened or Endangered by either the state of New Hampshire or the federal government. We currently have no recorded occurrences for sensitive species near this project area. A negative result (no record in our database) does not mean that a sensitive species is not present. Our data can only tell you of known occurrences, based on information gathered by qualified biologists and reported to our office. However, many areas have never been surveyed, or have only been surveyed for certain species. An on-site survey would provide better information on what species and communities are indeed present.*

F. Seagroves read into the record the memo received from the Milford Conservation Commission: *To Zoning Board of Adjustment From Conservation Commission, Fred Elkind – Conservation Coordinator, Dated August 15, 2011. At its August 11, 2011 meeting, the Conservation Commission voted to recommend that the ZBA approve the Special Exception for the proposed buffer alterations, with stipulations, as required for the subject property development. The vote was 4 to 2 in favor. Stipulations were as follows: 1) No salting of the driveway; 2) No further alteration of wetlands or buffer; 3) Buffer to be identified by signage and the presence of buffer to be identified in the deed.*

The Conservation Commission's decision was predicated on the fact that it was demonstrated to their satisfaction that there was no practical alternative to the proposal in order for the applicant to have reasonable use of her property. Further, the proposed fill and buffer disturbances result in the least impact possible to provide the required access.

C. Guida then went through the five criteria for special exception.

1. The proposed use shall be similar to those permitted in the district:

The proposed use will remain the same as the existing use of the existing woods road, vehicular access to the property from NH Rte 13. The proposed use includes the upgrade of the existing woods road to a driveway which meets current State and Town driveway safety and construction standards. Driveway construction for access to private property having frontage on Town or State road which meets Town minimum frontage requirements is permitted in the district. Proximate and adjacent properties to the subject property have had similar wetland buffer impacts which were approved by the Town in order to access property from existing frontage. Similar wetlands and associated buffer impacts for driveway access were approved on numerous lots within the district and including the following nearby lots: 52-18-6 NH Rte 13 (Church of Our Savior Episcopal Church) (wetlands Approval #2005-01762: Minimum Impact <3000 square feet) Wetland crossing and buffer impact to cross wetland area which drains to Compressor Brook, with access drive for future development on the property. The Town owned open-space land (Lot 52-1) was also created by the same 7 lot subdivision in 2002. Lot 47-42-1 NH Rte 13 (A& D Self Storage) (Wetlands Approval #2002-00060: Minor Permit 3000-10,000 square feet of impact 24' wide road to access self storage units) Wetland crossing and buffer impact in order to access newly created lot from a subdivision approved around 2002 from NH Rte 13, parent lot also had frontage on Colburn Road as well.

2. The specific site is an appropriate location for the proposed use because: The location of the proposed driveway is in the same location of the existing woods road which currently accesses the lot. The location of the proposed driveway avoids the wetlands to the greatest extent possible by following the existing woods road, crossing in another location off NH Rte 13 frontage would require greater wetland buffer impact than that which is proposed. The proposed driveway location has also been situated to minimize wetland buffer impact outside of the immediate wetland crossing area. Alternative driveway locations from Melendy Road have been investigated from the standpoint of safety and environmental impact and determined that due to the steepness of the slopes and the required grading in order to meet the Town of Milford driveway regulations and Stormwater Management and Erosion Control regulations that the driveway location off of NH Rte 13 would be the least impacting alternative. Although upgrading the existing woods road from NH Rte 13 would require a small amount of wetland and buffer impact it would prevent the need to construct a new driveway off Melendy Road which would require the removal of 1+/- acre of existing forested area, 8-10 foot soil cut, creating an addition of 6220+/- square feet of impervious area along a 500 ft driveway in order to access the building location. In summary, an access off Melendy Road would result in more land disturbance and tree cutting, more impervious area, steeper grades and more stormwater runoff to the wetlands; ultimately resulting in more environmental impacts. The proposed crossing along the existing woods road would require clearing of 0.2+/- acres and 3000+/- square feet of impervious area for a 200 ft long driveway along the existing woods road which would not detract significantly from the aesthetic quality of the neighborhood or the wetland and forested landscape. The existing woods road has historically and currently provides access to the property from NH Route 13 and will likely continue to provide access to the property for various activities including property maintenance, firewood processing and forest management activities; the proposed use incorporates an environmentally responsible alternative by upgrading the roadway in order to prevent unnecessary soil erosion.

3. The use as developed will not adversely affect the adjacent area because: The proposed use is the same as the existing use; the only changes being proposed are the required upgrades to meet Town and State safety requirements. The upgrade incorporates erosion control measures and drainage improvements which will serve to minimize sediment transport from NH Rte 13 and will stabilize disturbed soil until vegetation stabilization is complete. The use as developed will not adversely affect the adjacent area because all best management practices for construction the upgraded driveway will provide access to the property which has been designed to minimize any erosion during construction and in the future as well as provide safe and environmentally responsible access to the property.

4. There will be no nuisance or serious hazard to vehicles or pedestrians: The proposed upgrade will meet Town and State driveway construction regulations to improve safety of the driveway by providing safe sight distance, travel surfaces, side slopes and access for emergency vehicles. The usage as a residential access to a single family dwelling is a permitted use similar to other uses along NH Rte 13 and will not create any nuisance or serious hazard to vehicles or pedestrians.

5. Adequate appropriate facilities will be provided for the proposed operation of the proposed use: The proposed driveway upgrade will provide safe slopes, grading and drainage structures to allow for vehicular access to the property. Erosion control measures such as silt fence, erosion control fabric will be applied to stabilize slopes until vegetation becomes established within disturbed areas.

F. Seagroves asked if there were any further questions from the Board. There were none.

F. Seagroves proceeded to discussion of the seven wetland criteria.

S. Bonczar said the applicant did a very good job in addressing all the criteria; the presentation as far as the information contained in it was better than many wetland disturbance requests they have had in the past. The applicant demonstrated the need for the project. Alternatives were worse than this solution. Although it impacts wetland the alternative described would be much greater as far as #s 1 and 2, which he was addressing. Regarding impact on wildlife the applicant is taking steps to minimize that. Having a culvert there that is not currently there is a positive thing as well as the fact they are willing to reseed and put in plants in buffer area; although it is not what is there now, in time it will fill in. Re impact on quantity and quality of surface and groundwater, he is not an expert but took what he heard from the applicant. Re potential to cause increased flooding, erosion or sedimentation he felt that the woods road acts as a dam and in this case there will actually be a culvert, there is no chance of any backup to the south of this disturbance. Based on the location, as far as abutters doing similar things, he didn't think it would have an impact. As far as the impact of the proposed project on the values and functions of the total wetland or wetland complex, he felt the applicant demonstrated there would be no real adverse impact.

L. Horning said re the need for the proposed project she reiterated what S. Bonczar had said that the applicant went above and beyond in answering questions they were concerned about. She felt there is a need for the project. As the applicant pointed out, the forested area is very mature and disturbing over an acre of land and removing soil and sediment versus a small amount of impact is stark in comparison. Re the proposed impact is the least impact on wetlands, surface waters and/or associated buffers, she felt the applicant did a very good job of explaining what they intend to impact and how they intend minimize that as much as possible, such as the curvature of the driveway. The impact on plants, fish and wildlife, this is why they asked for studies to be done; they were addressed. The Conservation Commission passed it; they recommended that the Board agree to the exception. Re impact on quantity and quality of groundwater was addressed by Fieldstone in the questions read. Re potential to cause or increase flooding, erosion or sedimentation, the composition of the soil and some of it being sandy, was addressed to her satisfaction. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex or buffer area were also permitted alterations to the wetland and buffer proportional to their property rights was also addressed, with the topography of the lot being sculpted once the buffer zone is impeded on. And # 7, the impact of the proposed project on the values and functions of the total wetland or wetland complex. as outlined by Fieldstone and the Conservation Commission they are in agreement that the impact of the proposed project on the value of the total wetland and the wetland complex would be minimal compared to the impact on the lot above.

Z. Tripp agreed with the other Board members. The concerns he had at the previous meeting have been addressed by the information provided. #3, that area has been altered inside the buffer and that was ... by the letter from the NH Bureau. The impact on quality and quantity of surface water, everything runs off Rte 13 that won't change the buffer or change the quality of that and if the Board goes by the stipulations of the Conservation commission the quality of surface water coming from the driveway should not have adverse affect. Re cumulative impact to the abutters, impact to the buffers, with the new information regarding quality and quantity of water, there would be no adverse affect. With regard to flooding, #5, they have

written evidence now that they are putting a culvert under the driveway which if anything should reduce the risk of flooding. He did not see any negative impact on wetlands.

F. Seagroves agreed with the other members. There is a need for the project. It was pointed out that the alternative would be much more impact, taking out an acre of forestry; that impact is much greater. As far as impact on plants, fish and wildlife, that was answered with the letter from the State. It appears that with the culvert being put in, that will not increase flooding, erosion, etc.

Z. Tripp asked if they should make a motion to vote on the Conservation Commission stipulations.

F. Seagroves said they could, but they should go over the criteria for Special Exception.

S. Bonczar said for #1, the proposed use shall be similar to those permitted in the district, Residence R, special exception for wetland buffers is allowed and in the area there have been previous projects that affected wetland buffers. #2, the specific site is an appropriate location for the proposed use – he felt the board addressed that regarding the criteria the applicant had to meet with regard to the wetland and buffer disturbance and the fact that there is a woods road there already and they are using that and minimizing the impact, he felt the location is appropriate and the alternative is much more damaging to the land and environment. #3, the use as developed would not adversely affect the adjacent area – in any wetland case there is some of what some may consider adverse affect but he felt this was very limited and applicant has shown they do care about the adjacent area and areas around what they plan to disturb and have taken that into consideration. #4, No nuisance or serious hazard to vehicles or pedestrians – the driveway is being build to State and specifically to Town code so there is no issue there. Re adequate appropriate facilities, putting in a culvert and landscaping planned after the driveway is put in indicates appropriate facilities.

L. Horning said regarding the proposed use shall be similar to those permitted in the district, driveways are permitted in that district and disturbance of wetland buffers is permitted in that district, so it is similar to those in the area. Fieldstone outlined other previous cases allowed before this case. Re whether the specific site is an appropriate location for the proposed use, as Fieldstone has outlined as well as the applicant herself in the first case, the site is an appropriate location for the proposed use given the stark contrast of the disturbance of a significant amount of forest versus the minimal amount of impact on the wetland buffer. There will be no nuisance or serious hazard to vehicles or pedestrians, as S. Bonczar stated, the State is overseeing the driveway permitting process and the Town will be out there to insure it is done to their standards. Regarding adequate facilities for the proper operation of the proposed use, as outlined a recommended use has been given by the Conservation Commission along with the entire proposal presented by Fieldstone on how they plan to adjust the topography of the lot and drainage, yes adequate facilities will be provided for the proper operation of the proposed use.

Z. Tripp agreed with what other Board member stated. Applicant did a good job of presenting evidence; questions were well addressed, they covered those is 6.02.7, he agreed everything is compliant and he did not believe there is any adverse affect to adjacent areas.

F. Seagroves said re proposed use shall be similar to those permitted it the district, there have been other properties that have encroached into the wetlands and buffer. Specific site is an appropriate location for the proposed use – it was stated that this is the best location going back to the other location on the other side of the property would be taking out an acre of trees and a lot more soil than they are doing here. The use as developed will not adversely affect the adjacent area – he did not see where the runoff would affect the adjacent area. The road will be built up, but a culvert will be put in so the water being stopped by the road will be taken care of by the culvert; it will be almost the same. He did not see any nuisance or hazard to vehicles or pedestrians. As far as the last criteria, everything will be done according to State statutes or Town ordinance, so he did not see a problem there.

F. Seagroves asked the Board if they want to discuss a vote on the Conservation Commission stipulations.

S. Bonczar said that as members of the Board they can, as they have before, tack on stipulations if the vote is yes the stipulations go with that vote. They could require that the items the Conservation Commission has recommended be part of the approval, but he wanted to give his opinion on some of them: 1) No salting of the driveway – he had no issue with that; it is a fair enough stipulation. 2) No further alteration of the wetland – he did not feel that needs to be a stipulation as the Board is approving a specific plan with specific square footage of disturbance allowed; by altering any additional wetland or buffer applicant would

immediately be in violation and would have to reapply. He felt that is a given and the Board does not need to make it a stipulation. 3) Buffer to be identified by signage and presence of buffer to be identified by deed – he felt that would put undue requirement on the applicant and didn't know what the value of that is in this case. He didn't understand what it means; did it mean that they would like the applicant to put signs all along their property? if so, he had an issue with that; it is an undue requirement, asking the applicant to go above and beyond what the Board should be asking of the applicant and he didn't see any value with it. Regarding it being in the deed, he stated that the fact is when lots are surveyed the wetlands are marked.

Z. Tripp said the Town already has a map.

S. Bonczar agreed and said he didn't see any value in that one. The only one he saw as relevant to the case and could be considered an added stipulation would be limited salting of the driveway.

L. Horning agreed and said she found no factor for being required by a zoning board to place signage up and down their property. She found that to be an unusual request and agreed with S. Bonczar. She agreed also regarding it to be identified in the deed; those things are generally covered by a deed anyway and another landowner, if the ownership of the land was transferred, would still be required to appear before the Board if they were going to disturb anything. She found no need to require it. She didn't find it in the Board's authority to do so.

Z. Tripp agreed with S. Bonczar and said that the stipulations # 2 and 3 would be redundant.

F. Seagroves agreed regarding no further alterations to the wetland or buffer; if they wanted to do any further alterations they would have to come to the Board and this letter (Conservation Commission letter) will be in the packet anyway. He saw no reason for signage along there. He didn't understand putting the buffer in the deed. He did agree with no salting of the driveway because it is so close to the wetland.

S. Bonczar said even that, he still has an issue, because there is much more salt coming from Rte 13 than would ever come off the driveway.

F. Seagrove said the State can do that.

L. Horning said, to be fair, the driveway runs perpendicular to Rte 13; it is not running alongside of Rte 13. So it is across the wetland but that is why they addressed the vegetation and runoff and wildlife habitat and the fish and groundwater quality. So for her no salting was good.

S. Bonczar made a motion to add to this case the stipulation that, if approved, there is no use of salt on the driveway or that section of the driveway that is in the wetland and wetland buffer.

F. Seagroves asked if he is stipulating that they can use salt further up?

S. Bonczar said he felt the concern is within the wetlands or wetlands buffer, so in that area where there is wetland or wetlands buffer there is a restriction.

F. Seagroves said that may be why the signage is in there.

L. Horning agreed, saying there is no quantifying where the wetland buffer begins and ends. She asked if the Chairman could re-open the meeting in order to ask the Conservation Commission representative.

F. Seagroves opened the meeting for clarification by the Conservation Commission representative.

Audrey from the Conservation Commission said the reason they asked for boundary markers is because this lot if subdivided and primarily will be bordered by the wetland and town property. They would have no way to cross the water to monitor the buffer. Once this is granted, they cannot cross onto private property to make sure that there is no violation. They have named the property the Roach Wildlife Preserve because it is a very special ecosystem. The wetland field out there is very quiet even though it is close to Rte 13. The concern is how they are going to monitor anything once they cannot access it. She stated that although it is written in deeds, deeds are not always remembered very well. She stated one of the Commission's goals this year is to remind those who have property that abuts town property that they can't dump leaves, Christmas trees, and can't encroach. So the hope was it would be a way to let the landowner know that they are adjacent to town property and they have requirements.

L. Horning asked what is stopping the town from putting signs on their side of the property as opposed to making the homeowner do so. She said it appears to her to be dangerous ground to be treading, requiring homeowners to put signs on their property, using the Zoning Board or any Board, as opposed to having the town go out and putting their own signage up saying where the town property begins.

Audrey said because it is in the water.

Z. Tripp said the Zoning Board only considers the buffer. To ask the owner to mark the buffer to assist themselves.

S. Bonczar said the only concern is asking them to put sign

F. Seagroves said the only one he would agree to is the no salt stipulation.

L. Horning agreed. She said they are getting into tricky areas when they start trying to tell people where to put signs.

S. Bonczar made a motion that the stipulation go in that there is no salting of the driveway within the area of the wetlands or wetlands buffer.

L. Horning seconded.

All voted in favor of the stipulation.

F. Seagroves asked for any further discussion by the Board. There was none.

F. Seagroves stated that after receiving the petition and hearing all the evidence and taking into consideration personal knowledge of the property in question this Board has determined the following findings of fact:

Is this exception allowed by the ordinance?

Z. Tripp – yes; L. Horning – yes; S. Bonczar – yes; F. Seagroves –yes.

Are the conditions present under which the exception can be granted?

L. Horning – yes; S. Bonczar – yes; Z Tripp – yes; F. Seagroves –yes.

L. Horning made a motion to approve Case # 2012-1 with stipulations in place as amended by the Board.

S. Bonczar seconded.

Final Vote:

L. Horning – yes; S. Bonczar – yes; Z Tripp – yes; F. Seagroves – yes.

The exception was unanimously approved.

F. Seagroves reminded the applicant of the thirty-day appeal period.